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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of: David Domnitz : Date: September 17, 2004  
Serial number: 09/546,851 : Group Art Unit: 2684  
Confirmation Number: 3446 : Examiner: Alan T. Gantt  
Attorney Reference Number: P00043501 : Applicant's Attorney:  
Applicant  
Filed: April 10, 2000 : 2600 Glades Circle, Suite 400  
Weston, Florida 33327  
Title: APPARATUS AND METHOD FOR : Telephone number: (754) 366-7377  
DELIVERING INFORMATION TO  
AN INDIVIDUAL BASED ON  
LOCATION AND/OR TIME

**SWEARING BACK OF REFERENCE -****AFFIDAVIT OR DECLARATION UNDER 37 CFR 1.131**

The Honorable Commissioner of Patents and Trademarks  
Washington, D.C. 20231

Dear Sir:

This Affidavit or Declaration is in response to the final office action dated May 5, 2004. In addition, an amendment, a separate petition (PTO/SB/22) and fee (PTO-2038) for a two month extension of time is attached. Pursuant to 37 C.F.R. 1.7, this paper is timely filed.

**ABOUT THE PRIOR ART**

The cited prior art (Treyz, US-6,587,835), that Applicant is swearing behind was filed in February 2000 while Applicant filed in April 2000, only about two months before Applicant.

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**SWORN STATEMENT THAT APPLICANT IS FIRST TO INVENT**

Applicant is confident, and hereby swears that, Applicant is first to conceive, to invent and to use due diligence to reduce to practice above titled invention. Proof that Applicant is the first to invent is available upon request. The basis for this affidavit is also provided.

**THE 102(e) REJECTION**

On page 4 of the final office action, independent claim 1 was rejected under 35 U.S.C. 102(e), as being anticipated by Treyz et al (hereinafter Treyz). Applicant is responding to this basis of rejection as follows: Pursuant to 37 CFR 1.131 Swearing Back of Reference - Affidavit or Declaration of Prior Invention, Applicant is swearing back of reference for independent claim 1.

On page 6 of the final office action, independent claim 18 was rejected under 35 U.S.C. 102(e), as being anticipated by Treyz et al. Applicant is responding to this basis of rejection as follows: Pursuant to 37 CFR 1.131 Swearing Back of Reference - Affidavit or Declaration of Prior Invention, Applicant is swearing back of reference for independent claim 18.

On page 9 of the final office action, independent claim 28 was rejected under 35 U.S.C. 102(e), as being anticipated by Treyz et al. Applicant is responding to this basis of rejection as follows: Pursuant to 37 CFR 1.131 Swearing Back of Reference - Affidavit or Declaration of Prior Invention, Applicant is swearing back of reference for independent claim 28.

On page 10 of the final office action, claim 35 was rejected under 35 U.S.C. 102(e), as being anticipated by Treyz et al. Applicant is responding to this basis of rejection as follows: Pursuant to 37 CFR 1.131 Swearing Back of Reference - Affidavit or Declaration of Prior Invention, Applicant is swearing back of reference for independent claim 35.

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On page 11 of the final office action, claims 2 and 7 were rejected under 35 U.S.C. 102(e), as being anticipated by Treyz et al. Applicant is responding to this basis of rejection as follows: Pursuant to 37 CFR 1.131 Swearing Back of Reference - Affidavit or Declaration of Prior Invention, Applicant is swearing back of reference. If independent claim 1 is allowed, then dependent claims 2 and 7 will also be allowable.

On page 11 of the final office action, claims 3, 9, and 29 were rejected under 35 U.S.C. 102(e), as being anticipated by Treyz et al. Applicant is responding to this basis of rejection as follows: Pursuant to 37 CFR 1.131 Swearing Back of Reference - Affidavit or Declaration of Prior Invention, Applicant is swearing back of reference. If independent claim 1 is allowed, then dependent claims 3 and 9 will also be allowable. Likewise if independent claim 28 is allowed, then dependent claim 29 will also be allowable.

On page 11 of the final office action, claim 8 was rejected under 35 U.S.C. 102(e), as being anticipated by Treyz et al. Applicant is responding to this basis of rejection as follows: Pursuant to 37 CFR 1.131 Swearing Back of Reference - Affidavit or Declaration of Prior Invention, Applicant is swearing back of reference. If independent claim 1 is allowed, then dependent claim 8 will also be allowable.

On page 11 of the final office action, claims 12, 15, 19, 32, and 36 were rejected under 35 U.S.C. 102(e), as being anticipated by Treyz et al. Applicant is responding to this basis of rejection as follows: Pursuant to 37 CFR 1.131 Swearing Back of Reference - Affidavit or Declaration of Prior Invention, Applicant is swearing back of reference. If independent claim 1 is allowed, then dependent claims 12 and 15 will also be allowable. Likewise if independent claim 18 is allowed, then dependent claim 19 will also be allowable. Likewise if independent claim 28 is allowed, then dependent claim 32 will also be allowable. Likewise if independent claim 35 is allowed, then dependent claim 36 will also be allowable.

On page 11 of the final office action, claims 14, 17, 34, and 38 were rejected under 35 U.S.C. 102(e), as being anticipated by Treyz et al. Applicant is responding to this basis of rejection as follows: Pursuant to 37 CFR 1.131 Swearing Back of Reference - Affidavit or Declaration of Prior Invention, Applicant is swearing back of reference. If independent claim 1 is allowed, then dependent claims 14 and 17 will also be allowable. Likewise if independent claim 28 is allowed, then dependent claim 34 will also be allowable. Likewise if independent claim 35 is allowed, then dependent claim 38 will also be allowable.

On page 11 of the final office action, claim 20 was rejected under 35 U.S.C. 102(e), as being anticipated by Treyz et al. Applicant is responding to this basis of rejection as follows: Pursuant to 37 CFR 1.131 Swearing Back of Reference - Affidavit or Declaration of Prior Invention, Applicant is swearing back of reference. If independent claim 18 is allowed, then dependent claim 20 will also be allowable.

On page 12 of the final office action, claim 40 was rejected under 35 U.S.C. 102(e), as being anticipated by Treyz et al. Applicant is responding to this basis of rejection as follows: Pursuant to 37 CFR 1.131 Swearing Back of Reference - Affidavit or Declaration of Prior Invention, Applicant is swearing back of reference. If independent claim 35 is allowed, then dependent claim 40 will also be allowable.

On page 12 of the final office action, claim 48 was rejected under 35 U.S.C. 102(e), as being anticipated by Treyz et al. Applicant is responding to this basis of rejection as follows: Pursuant to 37 CFR 1.131 Swearing Back of Reference - Affidavit or Declaration of Prior Invention, Applicant is swearing back of reference. If independent claim 1 is allowed, then dependent claim 48 will also be allowable.

On page 12 of the final office action, claims 49 and 84 were rejected under 35 U.S.C. 102(e), as being anticipated by Treyz et al. Applicant is responding to this basis of rejection as follows: Pursuant to 37 CFR 1.131 Swearing Back of Reference - Affidavit or Declaration of

Prior Invention, Applicant is swearing back of reference. If independent claim 1 is allowed, then dependent claims 49 and 84 will also be allowable.

On page 12 of the final office action, claim 50 was rejected under 35 U.S.C. 102(e), as being anticipated by Treyz et al. Applicant is responding to this basis of rejection as follows: Pursuant to 37 CFR 1.131 Swearing Back of Reference - Affidavit or Declaration of Prior Invention, Applicant is swearing back of reference. If independent claim 1 is allowed, then dependent claim 50 will also be allowable.

On page 12 of the final office action, claims 51 and 54 were rejected under 35 U.S.C. 102(e), as being anticipated by Treyz et al. Applicant is responding to this basis of rejection as follows: Pursuant to 37 CFR 1.131 Swearing Back of Reference - Affidavit or Declaration of Prior Invention, Applicant is swearing back of reference. If independent claim 1 is allowed, then dependent claims 51 and 54 will also be allowable.

On page 13 of the final office action, claims 52, 55, 60, and 63 were rejected under 35 U.S.C. 102(e), as being anticipated by Treyz et al. Applicant is responding to this basis of rejection as follows: Pursuant to 37 CFR 1.131 Swearing Back of Reference - Affidavit or Declaration of Prior Invention, Applicant is swearing back of reference. If independent claim 1 is allowed, then dependent claims 52 and 55 will also be allowable. Likewise if independent claim 28 is allowed, then dependent claims 60 and 63 will also be allowable.

On page 13 of the final office action, claims 53, 56, 61, and 64 were rejected under 35 U.S.C. 102(e), as being anticipated by Treyz et al. Applicant is responding to this basis of rejection as follows: Pursuant to 37 CFR 1.131 Swearing Back of Reference - Affidavit or Declaration of Prior Invention, Applicant is swearing back of reference. If independent claim 1 is allowed, then dependent claims 53 and 56 will also be allowable. Likewise if independent claim 28 is allowed, then dependent claims 61 and 64 will also be allowable.

On page 13 of the final office action, claim 57 was rejected under 35 U.S.C. 102(e), as being anticipated by Treyz et al. Applicant is responding to this basis of rejection as follows: Pursuant to 37 CFR 1.131 Swearing Back of Reference - Affidavit or Declaration of Prior Invention, Applicant is swearing back of reference. If independent claim 28 is allowed, then dependent claim 57 will also be allowable.

On page 13 of the final office action, claims 58 and 62 were rejected under 35 U.S.C. 102(e), as being anticipated by Treyz et al. Applicant is responding to this basis of rejection as follows: Pursuant to 37 CFR 1.131 Swearing Back of Reference - Affidavit or Declaration of Prior Invention, Applicant is swearing back of reference. If independent claim 28 is allowed, then dependent claims 58 and 62 will also be allowable.

On page 13 of the final office action, claim 59 was rejected under 35 U.S.C. 102(e), as being anticipated by Treyz et al. Applicant is responding to this basis of rejection as follows: Pursuant to 37 CFR 1.131 Swearing Back of Reference - Affidavit or Declaration of Prior Invention, Applicant is swearing back of reference. If independent claim 28 is allowed, then dependent claim 59 will also be allowable.

On page 14 of the final office action, claims 65 and 66 were rejected under 35 U.S.C. 102(e), as being anticipated by Treyz et al. Applicant is responding to this basis of rejection as follows: Pursuant to 37 CFR 1.131 Swearing Back of Reference - Affidavit or Declaration of Prior Invention, Applicant is swearing back of reference. If independent claim 1 is allowed, then dependent claim 65 will also be allowable. Likewise if independent claim 28 is allowed, then dependent claim 66 will also be allowable.

On page 14 of the final office action, claims 67 and 68 were rejected under 35 U.S.C. 102(e), as being anticipated by Treyz et al. Applicant is responding to this basis of rejection as follows: Pursuant to 37 CFR 1.131 Swearing Back of Reference - Affidavit or Declaration of Prior Invention, Applicant is swearing back of reference. If independent claim 1 is allowed, then

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dependent claim 67 will also be allowable. Likewise if independent claim 28 is allowed, then dependent claim 68 will also be allowable.

On page 14 of the final office action, claims 73, 74, 76, and 77 were rejected under 35 U.S.C. 102(e), as being anticipated by Treyz et al. Applicant is responding to this basis of rejection as follows: Pursuant to 37 CFR 1.131 Swearing Back of Reference - Affidavit or Declaration of Prior Invention, Applicant is swearing back of reference. If independent claim 1 is allowed, then dependent claim 73 will also be allowable. Likewise if independent claim 18 is allowed, then dependent claim 74 will also be allowable. Likewise if independent claim 28 is allowed, then dependent claim 76 will also be allowable. Likewise if independent claim 35 is allowed, then dependent claim 77 will also be allowable.

On page 14 of the final office action, claims 79, 80, 82, and 83 were rejected under 35 U.S.C. 102(e), as being anticipated by Treyz et al. Applicant is responding to this basis of rejection as follows: Pursuant to 37 CFR 1.131 Swearing Back of Reference - Affidavit or Declaration of Prior Invention, Applicant is swearing back of reference. If independent claim 1 is allowed, then dependent claim 79 will also be allowable. Likewise if independent claim 18 is allowed, then dependent claim 80 will also be allowable. Likewise if independent claim 28 is allowed, then dependent claim 82 will also be allowable. Likewise if independent claim 35 is allowed, then dependent claim 83 will also be allowable.

On page 15 of the final office action, claim 85 was rejected under 35 U.S.C. 102(e), as being anticipated by Treyz et al. Applicant is responding to this basis of rejection as follows: Pursuant to 37 CFR 1.131 Swearing Back of Reference - Affidavit or Declaration of Prior Invention, Applicant is swearing back of reference. If independent claim 1 is allowed, then dependent claim 85 will also be allowable.

**THE 103(a) REJECTION**

On page 16 of the final office action, claims 4 and 30 as presented for claim 1 were rejected under 35 U.S.C. 103(a), as being anticipated by Treyz et al., in view of Brady et al. (hereinafter Brady). Applicant is responding to this basis of rejection as follows: Pursuant to 37 CFR 1.131 Swearing Back of Reference - Affidavit or Declaration of Prior Invention, Applicant is swearing back of reference. If independent claim 1 is allowed, then dependent claim 4 will also be allowable. Likewise if independent claim 28 is allowed, then dependent claim 30 will also be allowable.

On page 17 of the final office action, claim 45 was rejected under 35 U.S.C. 103(a), as being anticipated by Treyz et al., in view of Brady et al. Applicant is responding to this basis of rejection as follows: Pursuant to 37 CFR 1.131 Swearing Back of Reference - Affidavit or Declaration of Prior Invention, Applicant is swearing back of reference. If independent claim 1 is allowed, then dependent claim 45 will also be allowable.

On page 17 of the final office action, claims 13, 16, 33, and 37 were rejected under 35 U.S.C. 103(a), as being anticipated by Treyz et al., in view of Brady et al. Applicant is responding to this basis of rejection as follows: Pursuant to 37 CFR 1.131 Swearing Back of Reference - Affidavit or Declaration of Prior Invention, Applicant is swearing back of reference. If independent claim 1 is allowed, then dependent claims 13 and 16 will also be allowable. Likewise if independent claim 28 is allowed, then dependent claim 33 will also be allowable. Likewise if independent claim 35 is allowed, then dependent claim 37 will also be allowable.

On page 17 of the final office action, claim 72 was rejected under 35 U.S.C. 103(a), as being anticipated by Treyz et al., in view of Brady et al. Applicant is responding to this basis of rejection as follows: Pursuant to 37 CFR 1.131 Swearing Back of Reference - Affidavit or Declaration of Prior Invention, Applicant is swearing back of reference. If independent claim 1 is allowed, then dependent claim 72 will also be allowable.

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On page 17 of the final office action, claim 78 was rejected under 35 U.S.C. 103(a), as being anticipated by Treyz et al., in view of Brady et al. Applicant is responding to this basis of rejection as follows: Pursuant to 37 CFR 1.131 Swearing Back of Reference - Affidavit or Declaration of Prior Invention, Applicant is swearing back of reference. If independent claim 1 is allowed, then dependent claim 78 will also be allowable.

On page 18 of the final office action, claims 5, 6, 10, and 31 were rejected under 35 U.S.C. 103(a), as being anticipated by Treyz et al., in view of Brady et al., and further in view of Martinez et al. (hereinafter Martinez). Applicant is responding to this basis of rejection as follows: Pursuant to 37 CFR 1.131 Swearing Back of Reference - Affidavit or Declaration of Prior Invention, Applicant is swearing back of reference. If independent claim 1 is allowed, then dependent claims 5, 6, and 10 will also be allowable. Likewise if independent claim 28 is allowed, then dependent claim 31 will also be allowable.

On page 18 of the final office action, claim 11 was rejected under 35 U.S.C. 103(a), as being anticipated by Treyz et al., in view of Brady et al., and further in view of Martinez et al. (hereinafter Martinez). Applicant is responding to this basis of rejection as follows: Pursuant to 37 CFR 1.131 Swearing Back of Reference - Affidavit or Declaration of Prior Invention, Applicant is swearing back of reference. If independent claim 1 is allowed, then dependent claim 11 will also be allowable.

On page 19 of the final office action, claims 46 and 47 were rejected under 35 U.S.C. 103(a), as being anticipated by Treyz et al., in view of Brady et al., and further in view of Martinez et al. (hereinafter Martinez). Applicant is responding to this basis of rejection as follows: Pursuant to 37 CFR 1.131 Swearing Back of Reference - Affidavit or Declaration of Prior Invention, Applicant is swearing back of reference. If independent claim 1 is allowed, then dependent claims 46 will also be allowable. Likewise if independent claim 28 is allowed, then dependent claim 47 will also be allowable.

On page 19 of the final office action, claims 68-71 as presented for claim 1 were rejected under 35 U.S.C. 103(a), as being anticipated by Treyz et al., in view Granstram et al. (hereinafter Granstram). Applicant is responding to this basis of rejection as follows: Pursuant to 37 CFR 1.131 Swearing Back of Reference - Affidavit or Declaration of Prior Invention, Applicant is swearing back of reference. If independent claim 1 is allowed, then dependent claim 69 will also be allowable. Likewise if independent claim 18 is allowed, then dependent claim 70 will also be allowable. Likewise if independent claim 28 is allowed, then dependent claims 68 and 71 will also be allowable.

### CONCLUSION

Applicant thanks the Examiner for the Examiner prosecuting this invention. In response to the final office action, Applicant is providing this Affidavit or Declaration of Prior Invention Under 37 CFR 1.131. In addition, a separate petition for a two month extension of time is attached to this affidavit and all corresponding fees have been deposited accordingly. Applicant further invites the Examiner to contact Applicant for a telephonic interview at the below listed number if the Examiner believes that prosecution of the application can be furthered by so doing.

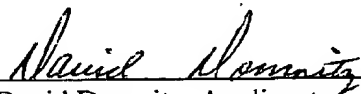
Respectfully submitted,

Telephone number: (754) 366-7377

By:  
David Domnitz, Applicant

I hereby certify that this correspondence is being faxed via the telephone network to the attention of: Mr. Alan T. Gantt, Examiner

on: September 17, 2004  
Date of Deposit

  
David Domnitz, Applicant

September 17, 2004  
Signature Date

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